

CITY OF ENCINITAS

Proposition A

(This proposition will appear on the ballot in the following form.)

PROP A

Shall the people of Encinitas adopt an initiative measure, known as "The Encinitas Right to Vote Amendment" to require voter approval, by a majority vote of the electorate, for a major amendment to a planning policy document (defined to mean the Land Use Element of the General Plan, Land Use Policy Maps of the General Plan, Zoning Code, Zoning Map, any specific plan, and development agreements) and to impose a citywide height limit?

This proposition requires approval by a simple majority
(over 50%) of the voters.

Full text of this proposition follows the arguments and rebuttals.

CITY ATTORNEY IMPARTIAL ANALYSIS OF PROPOSITION A

The Encinitas General Plan and Zoning Code establishes land use and development regulations. They generally require voter approval of any change in the density, intensity or type of allowed development, but exempt those changes that the City Council finds, by a four-fifths vote, either are minor in nature or are a "significant public benefit." The General Plan and Zoning Code also generally limit building height to two stories or 30', with lower limits for certain residential uses, and higher limits for certain medical developments and public high schools, and development pursuant to approved specific plans.

This Initiative, if approved by the Encinitas electorate, would require voter approval for certain amendments to the General Plan, Zoning Code and Zoning Map, and to approved specific plans and development agreements. The principal amendments requiring voter approval would be those that:

- Increase the maximum number of residential units or commercial intensity on any parcel;
- Increase the maximum allowable number of separate parcels created from a parcel;
- Change the zoning on a parcel from residential to non-residential; or
- Change the zoning to a mixed use zone that allows new or additional residential units or commercial uses.

CITY ATTORNEY IMPARTIAL ANALYSIS OF PROPOSITION A (continued)

The Initiative would also repeal the existing policies that allow certain land use changes without voter approval if they are "minor" or provide "significant public benefit."

The Initiative would impose a City-wide height limit of two stories or 30', except for certain medical developments and public high school buildings, and would repeal existing provisions allowing higher structures under approved specific plans. The Initiative would also modify existing public hearing notice requirements.

The Initiative's voter approval requirements and height limit would conflict with a number of City General Plan and Zoning Code provisions, and make more difficult the City's ability to comply with mandatory State statutory housing requirements. The voter approval requirements and height limit would also conflict with certain State housing statutes (including density bonus law), but the statutes would prevail over the Initiative. The voter approval requirements would create an internal General Plan inconsistency that violates State law but is curable. The Initiative's City-wide height limit would conflict with and supersede different heights currently allowed under a number of approved specific plans, but would not apply to the approved Encinitas Ranch Development Agreement (until its expiration in 2014). The height limit would also increase the allowable height for the construction of most residential and accessory structures.

The Initiative's effective date would differ depending on whether lands are located inside or outside the State's defined "coastal zone." With respect to those portions of Encinitas outside the coastal zone, this Initiative would take effect ten days after the Encinitas City Council certifies that it received a majority of the votes cast on the measure. The Initiative would take effect within the coastal zone portions of Encinitas following both voter approval and certification by the California Coastal Commission. As a result, if approved by the voters, this Initiative might apply to only a portion of Encinitas for a period of time.

ARGUMENT IN FAVOR OF PROPOSITION A

Vote YES on Proposition A to guarantee your right to vote on increases in zoning density or building heights above Encinitas' existing 30-foot / two-story height limit. **It's that simple.**

Our current General Plan, the City's constitution, already provides for our right to vote on zoning increases. Unfortunately, it also allows the City Council to bypass a public vote if they believe the zoning increase provides a "public benefit." Past Councils have freely exercised this loophole for minimal benefits such as added commercial space or increased housing.

Proposition A eliminates this loophole and requires a public vote on up-zoning.

Proposition A also upholds the Encinitas General Plan's 30-foot / 2-story height limit.

Using their loophole, previous Councils adopted special planning areas in Downtown Encinitas, Encinitas Ranch, and North 101, allowing 3-story buildings and buildings taller than 30 feet. Moonlight Lofts and Pacific Station are examples of tall projects built using this loophole. Passing Proposition A will restore the public's right to vote before buildings exceeding two stories or 30 feet can be built.

Why Now? Our City Council's appointed committee recommended increases in density up to 45 units per acre and increases in height up to 5 stories in certain locations throughout the City. (ERAC committee 3/22/12 minutes and Draft Housing Policy Report dated 9/27/2012.) The committee's strategy includes potentially up-zoning the strawberry fields on Manchester to "30+ dwelling units per acre" and allowing multi-story residential units above retail stores along El Camino Real. **Imagine the traffic!**

A YES vote will preserve and protect our low density community character while putting responsible growth and development in the hands of voters.

The choice is yours. Protect our quality of life and small beach town community character. **Vote YES on Proposition A.**

www.EncinitasRightToVote.com for more details.

Bob Bonde
Leader of the Encinitas
Incorporation Effort

Bruce Ehlers
Former Encinitas
Planning Commissioner

Ian Thompson
Husband of former Encinitas
Councilmember, Maggie Houlihan

Olivier Canler
Leader of Save New Encinitas

Dennis Holz
Former Encinitas Mayor
and Councilmember

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION A

PROP A IS NOT THAT SIMPLE!

Encinitas citizens ALREADY have the right to vote on upzoning without Prop A. Your City Council unanimously agrees to protect your right to vote. Voting **NO** on Prop A avoids developer driven campaigns and wasting taxpayer dollars on lawsuits.

An independent study identified many adverse consequences.

LET'S NOT GOVERN FROM FEAR

THERE NEVER WERE, AND WILL NOT BE, APPROVED PLANS FOR 5-STORY BUILDINGS IN ENCINITAS. Major land use changes **HAVE ALWAYS** happened with a vote of the people and the Council is committed to codifying this practice.

LIMITS PRIVATE PROPERTY RIGHTS

Prop A changes how height is measured, which limits what you can do on undeveloped land and allows taller structures in existing developments. Imagine a 30-foot structure five feet from your property line.

TAKES AWAY LOCAL CONTROL

Proposition A takes away local control that was reflected in the neighborhood-based **Specific Plans** for the Highway 101 Corridor and Encinitas Ranch and undermines years of work. The extensive public process that went into these adopted and Coastal Commission approved land-use planning documents deserves to be upheld. Prop A will make responsible, quality projects more difficult, more expensive and potentially infeasible. It may also threaten historic preservation efforts.

COUNCIL CONSENSUS

Our Council doesn't always agree on issues facing our city. However, the voters elected a Council that understands its responsibility to protect and enhance quality of life and community character. **That's why your City Council unanimously recommends that you VOTE NO ON PROP A!**

Teresa Arballo Barth
Mayor

Lisa Shaffer
Deputy Mayor

Kristin Gaspar
Council Member

Tony Kranz
Council Member

Mark Muir
Council Member

ARGUMENT AGAINST PROPOSITION A

Your City Council opposes Proposition A as written. While the Council does agree with the intent of individual parts of the proposition, state law does not allow voters to approve portions of an initiative; it must be accepted or rejected in whole. This is why the **Council voted to recommend a NO vote** on Proposition A.

HEIGHT LIMIT

Proposition A imposes a city-wide height limit and changes how building height is measured. It could be interpreted to allow raising the existing lower-than-30-foot limit to a higher 30-foot limit in residential areas.

OVERRIDES COMMUNITY PLANS

Prop A would undermine efforts supported by a decade of public input to revitalize Highway 101 in our downtown and Leucadia. These changes would override existing policies and supersede the Downtown, Encinitas Ranch, and North 101 Specific Plans.

DIVIDES OUR COMMUNITY

The Initiative makes changes in the Coastal Zone that could not be implemented without approval from the Coastal Commission. This could result in different rules for different parts of Encinitas and increase, rather than decrease, development pressures in this area.

STATE MANDATES REMAIN

Proposition A will reduce the City's ability to manage state required growth. If land use plans are challenged, courts could intervene in our local planning decisions.

COMMITMENT TO PROTECT

The Encinitas City Council is committed to preserving quality of life and community character that makes Encinitas such a special place. The Council will propose changes to the General Plan (Land Use Policies 3.10 & 3.12.5) to require zoning changes and General Plan Updates to be approved by a public vote providing the community with a greater voice in our future. This will fulfill the spirit of Proposition A – the right to vote on upzoning - without the potential adverse consequences.

Please vote NO on Proposition A.

Teresa Arballo Barth
Mayor

Lisa Shaffer
Deputy Mayor

Kristin Gaspar
Council Member

Tony Kranz
Council Member

Mark Muir
Council Member

REBUTTAL TO ARGUMENT AGAINST PROPOSITION A

We believe the Voters of Encinitas overwhelmingly oppose increased densities and taller buildings. Proposition A guarantees voters the opportunity to approve future increases in zoning density and height.

It is urgent to pass Proposition A to prevent the Council from exercising their loophole to increase housing density and building heights as part of the upcoming General Plan Update. **Imagine Council-approved taller buildings, more houses and more traffic if Proposition A doesn't pass!**

The opposition's claim that Proposition A will increase building heights is outlandish. **Proposition A upholds the current General Plan's city-wide maximum height** that states, "no building or structure shall exceed a maximum height of two stories or 30 feet." Proposition A does not override the current Municipal Code that enforces lower height limits in residential zones and for accessory units. It doesn't infringe on existing property rights.

Why would the Council oppose Proposition A? Would they vote differently from you? Do they fear your vote? Measure their actions, not their words.

It is simple! Whose vote do you trust: politicians' or yours?

Don't be fooled by slick scare tactics by developers and others who seek to defeat your right to vote. Development harmonious with current zoning gets approved. Increases will require your vote. **Encinitas belongs to the voters, not developers.** Vote YES to keep your right to approve future major zoning increases.

Vote YES on Proposition A to guarantee voters have local control to preserve and protect Encinitas for generations.

Ed Wagner
past President,
Encinitas Taxpayers Association

Barbara Yost
2012 Encinitas
Council Candidate

Peter Stern
Cardiff Resident

Denise Martin
New Encinitas Resident

Susan Turney
Leucadia Resident

The text of the Initiative Measure is as follows:

**CITY OF ENCINITAS INITIATIVE MEASURE TO BE SUBMITTED
DIRECTLY TO THE VOTERS
THE PEOPLE OF THE CITY OF ENCINITAS DO ORDAIN AS FOLLOWS:**

Section 1. TITLE.

1.1. This measure shall be known as the Community Character and Voters' Rights Initiative.

Section 2. STATEMENT OF PURPOSES AND INTENT.

Our Zoning Map, General Plan and Zoning Ordinances provide important protections to many aspects of our community. This measure gives the Voters of Encinitas final word on major increases in zoning density or intensity of land use. In doing so, it is the intent of this measure to:

- 2.1. Protect our natural resources such as lagoons, watershed, riparian, and wildlife habitat, natural vegetation, bluffs, and hillsides for our lives, our children's lives and future generations.
- 2.2. Prevent the urbanization of our small town character and maintain the individual character of our five unique communities.
- 2.3. Ensure infrastructure and public benefits, such as schools, parks, roads, sewer, and water facilities, are adequately planned and funded prior to approving any increase in zoning.
- 2.4. Preserve our community's zoning and property rights in perpetuity, if we so choose.

This measure does not limit development as currently permitted under existing vested property rights of land owners. It entrusts the protection of the community's shared property rights, including the final approval on proposed increased zoning densities, to the majority vote of the Voters of Encinitas.

Section 3. PLANNING POLICY DOCUMENTS COVERED.

3.1. After this measure becomes effective, no repeal, amendment or adoption of all or part of the following land use planning policy documents of the City of Encinitas may become effective unless and until there is compliance with provisions of this initiative measure:

- a. The text of the Encinitas General Plan's Land Use Element,
- b. The Land Use Policy Maps of the Encinitas General Plan (including the following policy maps: "Land Use Policy: Cardiff-by-the-Sea" LU-59, "Land Use Policy: Leucadia" LU-64, "Land Use Policy: New Encinitas" LU-67, "Land Use Policy: Old Encinitas" LU-73, and "Land Use Policy: Olivenhain" LU-77),
- c. The text of the Encinitas Zoning Regulations (Title 30 of the Encinitas Municipal Code),
- d. The Zoning Map of the City of Encinitas,
- e. Any Specific Plan for a geographic area within the City, or
- f. Any Development Agreement granting rights to develop private or public land.

3.2. In this initiative measure the above six items are referred to as the "Planning Policy Documents."

Section 4. TYPES OF AMENDMENTS COVERED.

4.1. A "Major Amendment" of any of the Planning Policy Documents means any amendment which results in any of the following changes to the development standards for any parcel of land affected by the proposed amendment:

- a. Increases the maximum allowable number of residential units which may be constructed on any parcel or group of parcels.
- b. Increases the maximum allowable number of separate parcels which may be created from an existing parcel or group of parcels.
- c. Changes zone type for a parcel or parcels from Agricultural, Public/Semi-Public, Ecological Resource/Open Space/Parks or Open Space to a different zone type.

- d. Changes zone type for a parcel or parcels from a non-mixed-use zone to mixed-use type zone resulting in additional residential units where none were previously permitted, allowing commercial where commercial was not previously permitted or increasing the maximum allowable residential units.
- e. Changes a parcel or parcels from any residential land use to allow any other non-residential land use.
- f. Increases the allowed maximum height of development or changes how height is measured such that additional height could be permitted than previously permitted.
- g. Increases the maximum allowable commercial or retail square footage for a parcel or group of parcels.
- h. Repeals any of the Planning Policy Documents.

4.2. A "Regular Amendment" of any of the Planning Policy Documents includes any amendment which is not a Major Amendment.

Section 5. AMENDMENTS TO ENCINITAS PLANNING POLICY DOCUMENTS.

5.1. No Major Amendment of any of the Planning Policy Documents shall be effective unless and until it is approved by a simple majority vote of the voting electorate of the City of Encinitas voting 'YES' on a ballot measure proposing the Major Amendment at a regular or special election. The entire text of a Major Amendment and an easily readable map of the geographic area affected shall be included in the sample ballot material which is mailed to registered voters prior to the election.

5.2. No Major Amendment and no Regular Amendment of any of the Planning Policy Documents shall be effective unless and until it is approved by an ordinance adopted by the City Council, but no such amendment shall be considered until a public hearing is conducted on the proposed amendment at both the Planning Commission and at the City Council in the manner provided by state law and advance notice is given as required by section 4.3 below.

5.3. No public hearing to consider an amendment of any of the Planning Policy Documents shall be conducted less than 20 days after the date a notice accurately describing the proposed amendment is sent by first class mail to the owners of each parcel of land, and a notice is sent by first class mail addressed to the occupant of each lawful unit on each parcel of land, located within a radius measured outward 500 feet from the boundaries of each parcel of land affected by the proposed amendment.

5.4. The notice described in section 4.3 shall include at least all the following information in not less than 13 point type: a. The name of the applicant proposing the amendment. b. The total acreage of the area proposed for amendment. c. A easily readable map of all parcels affected by the amendment, including all street names. d. The land uses and building density currently allowed for each parcel affected. e. The land uses and building density proposed to be allowed for each parcel affected. f. The date, time, and place of the upcoming public hearing.

5.5. All Major Amendment and all Regular Amendment of any Planning Policy Documents shall be required to adhere to the Encinitas Community Participation Program as described in Chapter 23.06 of the Encinitas Municipal Code.

Section 6. CITY WIDE HEIGHT LIMITS.

6.1. Maximum Height. On and after the date this initiative measure becomes effective no building or structure shall exceed a maximum height of two stories or 30 feet. Height shall be measured from the lower of the natural or finished grade adjacent to the structure, to the highest portion of the roof immediately above.

6.2. Exemptions to Height Limit. The following structures are exempted from this height limit: Medical Complex development projects and specified buildings associated with a public high school on a minimum 10 acre site, as currently provided in Section 30.28.010(C) and (D) of the Encinitas Zoning Code.

Section 7. THIS MEASURE AMENDS EXISTING POLICY DOCUMENTS.

7.1. Once adopted by the voters, this measure shall amend and become a new part of the Encinitas General Plan's Land Use Element and the Encinitas Zoning Code (Title 30 of the Encinitas Municipal Code).

7.2. After the date this measure becomes effective the entire text of this measure shall be printed within all copies of the Encinitas General Plan Land Use Element and also within all

copies of the Encinitas Zoning Code, and it shall appear immediately following the table of contents of each such document.

7.3 This measure repeals Policy 3.10, Exceptions 4 and 5 of Policy 3.12, and Policy 7.10 of the Encinitas General Plan's Land Use Element and Section 30.16.010(B)(6)(d) of the Encinitas Zoning Code. This measure does not repeal the remaining policies found in Goal 3 (growth management) of the Encinitas General Plan's Land Use Element, but intends to supplement (i.e., add to) the voter requirements found in those policies.

Section 8. EFFECTIVE DATE.

8.1. The provisions of this initiative measure shall become effective at twelve o'clock noon the day after it is approved at an election of the voters of the City of Encinitas. It shall be considered as adopted upon the date that the result of the election is declared by the City of Encinitas City Council, and shall go into effect 10 days after that date as specified in Section 9217 of the California Elections Code.

Section 9. PRIORITY.

9.1. Once this initiative measure becomes effective, its provision shall prevail over and supersede all provisions of the municipal code, ordinances, resolutions, and administrative policies of the City of Encinitas which are in conflict with any provisions of this measure.

Section 10. SEVERABILITY.

10.1. In the event a final judgment of a court of proper jurisdiction determines that a provision of this initiative measure, or a particular application of a provision, is invalid or unenforceable pursuant to a state or federal law or constitution, the invalid or unenforceable portion or application shall be severed from the remainder of this measure, and the remaining portions of this measure shall remain in effect without the invalid or unenforceable provision or application.

Section 11. CONFLICT WITH OTHER BALLOT MEASURES.

11.1. In the event that any other ballot measure is proposed for voter approval on the same election ballot as this initiative measure, and that other measure contains provisions which deal with the same or similar subjects, it is the intent of the voters in adopting this measure that it shall prevail over any such other ballot measure in its entirety to the extent that this measure is approved and receives a greater number of votes for approval of the other measure. In such case, no provision of the other measure shall become effective.

Section 12. AMENDMENT OR REPEAL.

12.1. Once this initiative measure becomes effective no provision of this measure may be amended or repealed except by a majority of the voters of the City of Encinitas voting on a ballot measure for that purpose.

Section 13. REQUEST FOR SPECIAL ELECTION.

13.1. In the event that the initiative petition is signed by not less than 15 percent of the voters of the city according to the last report of registration by the county elections official to the Secretary of State, a special election to approve this ordinance is hereby requested pursuant to Section 9214 of the California Elections Code.